

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

Kevin Moitoso, Tim Lewis, Mary Lee Torline, and  
Sheryl Arndt, individually and as representatives of  
a class of similarly situated persons, and on behalf  
of the Fidelity Retirement Savings Plan,

Plaintiffs,

v.

FMR LLC, the FMR LLC Funded Benefits  
Investment Committee, the FMR LLC Retirement  
Committee, Fidelity Management & Research  
Company, FMR Co., Inc., and Fidelity Investments  
Institutional Operations Company, Inc.,

Defendants.

Case No. 1:18-cv-12122-WGY

**PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Local Rule 7.1, and this Court's Order dated April 3, 2019 (ECF No. 68), Plaintiffs Kevin Moitoso, Tim Lewis, Mary Lee Torline, and Sheryl Arndt, as representatives of the class certified by the Court, and on behalf of the Fidelity Retirement Savings Plan ("Plaintiffs"), respectfully move this Court for an order granting partial summary judgment for Plaintiffs as to (1) whether the Funded Benefits Investment Committee ("FBIC") breached its fiduciary duty to prudently monitor the Plan's investments; (2) whether the Retirement Committee breached its fiduciary duty to prudently monitor and control the Plan's recordkeeping expenses; and (3) whether FMR LLC violated 29 U.S.C. § 1106(b)(3).

This motion is based on the accompanying Statement of Undisputed Material Facts, Memorandum of Law, Declaration of Mark Thomson and exhibits thereto, Plaintiffs' Fourth Amended Complaint (ECF No. 77), Defendants' Answer to the Fourth Amended Complaint (ECF No. 88), the Court's Order granting the Parties' Stipulation Regarding Class Certification (ECF

No. 83); the Stipulations of Fact previously filed in this action (ECF Nos. 87-1 & 2), Plaintiffs' forthcoming reply brief and any accompanying papers, and all files, records, and proceedings in this matter.

**LOCAL RULE 7.1 CERTIFICATION**

I, Kai H. Richter, hereby certify that I conferred with counsel for Defendants in good faith on September 3, 2019 regarding the issues raised in this motion, and Defendants do not assent to the relief requested.

Respectfully Submitted,

Dated: September 6, 2019

**NICHOLS KASTER, PLLP**

s/Kai Richter

Kai Richter (admitted *pro hac vice*)

Paul J. Lukas (admitted *pro hac vice*)

James H. Kaster (admitted *pro hac vice*)

Brock T. Specht (admitted *pro hac vice*)

Carl F. Engstrom (admitted *pro hac vice*)

Jacob T. Schutz (admitted *pro hac vice*)

Mark E. Thomson (admitted *pro hac vice*)

NICHOLS KASTER, PLLP

4600 IDS Center

80 S. 8th Street

Minneapolis, Minnesota 55402

krichter@nka.com

lukas@nka.com

kaster@nka.com

bspecht@nka.com

cengstrom@nka.com

jschutz@nka.com

mthomson@nka.com

Jason M. Leviton (BBO #678331)

Jacob A. Walker (BBO #688074)

BLOCK & LEVITON LLP

260 Franklin Street, Suite 1860

Boston, Massachusetts 02110

(617) 398-5600

jason@blockesq.com

jacob@blockesq.com

ATTORNEYS FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

I hereby certify that on September 6, 2019, a true and correct copy of the foregoing was served by CM/ECF to the parties registered to the Court's CM/ECF system.

Dated: September 6, 2019

s/ Kai Richter

Kai Richter